

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LEO BOYKINS, III

Petitioner, : Case No. 3:14-cv-255

- vs -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

ERIC D. WILSON, Warden,

:  
Respondent.

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**REPORT AND RECOMMENDATIONS**

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Petitioner Leo Boykins, III, brought this habeas corpus action *pro se* pursuant to 28 U.S.C. § 2241 to obtain relief with respect to two state court cases in the Dayton Municipal Court: *State v. Boykins*, Case No. 2009 TRD 011748, and *State v. Boykins*, Case No. 2011 TRT 003135.

In the 2009 case, Boykins was convicted on his plea of guilty of driving without a valid license on June 26, 2009. He was fined \$125 plus court costs and companion charges of driving under suspension, failure to reinstate driver's license, and improper display of license plates were dismissed. When Boykins failed to pay the fine and costs in accordance with the agreed payment plan, a warrant was issued and sent to the Bureau of Motor Vehicles to block issuance of a new license.

In the 2011 case, Boykins was charged with driving without a seatbelt. He failed to appear for initial appearance and a writ of habeas corpus was issued for his arrest on March 18, 2011.

Boykins asserts that he should receive jail time credit for time served regarding these two

cases because he was house “at the county detention for nearly a year, which Montgomery County refused to arrest him for these offenses.” (Petition, Doc. No. 2, PageID 18.) He requests “time served for nearly a year that can and should be credited for those offenses which he is now serving a five (5) year sentence.” *Id.* As relief he requests that the warrants or detainees in those two cases be dismissed.

Petitioner is in the custody of Respondent, the Warden of the Federal Correctional Center at Petersburg, Virginia, as the result of a Judgment and Commitment Order of this Court in Case No. 3:12-cr-121. Boykins is serving a sixty-month sentence upon his conviction on a plea of guilty to one count of conspiracy to possess with intent to distribute heroin (Doc. No. 78 in 3:12-cr-121).

Boykins understandably sued his current custodian, Warden Wilson. However, 28 U.S.C. § 2241 only gives District Judges authority to issue the writ “within their respective jurisdictions.” This Court therefore does not have authority to issue the writ to Warden Wilson. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

The proper respondent within this judicial district would be the Dayton Municipal Court, the court in which both of the referenced cases against Mr. Boykins were filed. See *Braden v. 30<sup>th</sup> Judicial Circuit Court*, 410 U.S. 484 (1973). This Court has jurisdiction under 28 U.S.C. § 2241 to issue the writ to the Dayton Municipal Court.

Rather than dismiss the case for lack of jurisdiction over the Respondent, the Magistrate Judge proposed to substitute the Dayton Municipal Court as Respondent and contacted City of Dayton Chief Prosecutor Stephanie Cook to determine if she would object on behalf of the Court to the substitution. Rather than proceed in that manner, Prosecutor Cook obtained from the Dayton Municipal Court dismissals of both of those cases. Certified copies of the disposition

entries, signed by Senior Magistrate Collette Moorman, are attached. The seatbelt charge was withdrawn at the request of the Prosecutor (“WDROP” in the dismissal entry) because of Boykins’ present confinement. In the no driver’s license case, the case was terminated for time served and the balance of fines and costs suspended.

By virtue of the dismissals, there is no longer any process outstanding from the Dayton Municipal Court which can act as a detainer on Petitioner. While this case is not technically moot because there was still a warrant outstanding in 2011 traffic case when this case was filed, Petitioner has now received all the relief he sought<sup>1</sup>.

As a formal matter, it is respectfully recommended that the Petition be dismissed without prejudice for lack of personal jurisdiction of the Respondent. Because reasonable jurists would not disagree with this conclusion, Petitioner should be denied a certificate of appealability and the Court should certify to the Sixth Circuit that any appeal would be objectively frivolous.

August 7, 2014.

s/ *Michael R. Merz*  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ.

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<sup>1</sup> To the extent the Petition can be read as seeking jail time credit against his federal sentence for time spent in jail, Boykins is not entitled to such credit based on the Dayton Municipal Court cases. Boykins was ordered detained in his federal criminal case by Magistrate Judge Michael Newman on September 28, 2012. Whether Boykins is entitled to jail time credit based on the detention order is not before this Court in the present case and must be presented first to the Bureau of Prisons.

P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).

Copies:        The Honorable Collette Moorman  
                  City Prosecutor Stephanie Cook  
                  Warden Eric Wilson



DAYTON MUNICIPAL COURT

E N T R Y

CASE NO: 09TED11748 DEFENDANT: LEO BOYKINS III

8-7-14

Case terminated for

time served - Imprison

suspend fines  
+ costs

DM

8-7, 2014

I hereby certify the foregoing to be a true and  
correct copy of the original on file in this court.

DAYTON MUNICIPAL COURT

Mark E. Owens, Clerk of Court

Deputy

By Austa Stee



ALIAS	MARRIED	AGE
SCHOOL	GRADE	
EMPLOYER	ADDRESS	
OWNER OF CAR	ADDRESS	
NO. OF OCCUPANTS	<input type="checkbox"/> WITH OWNER CONSENT	<input type="checkbox"/> WITHOUT CONSENT
NAME OF FATHER (NATURAL)	PHONE NO.	<input type="checkbox"/> LIVING <input type="checkbox"/> DECEASED
ADDRESS		
NAME OF MOTHER (NATURAL)	PHONE NO.	<input type="checkbox"/> LIVING <input type="checkbox"/> DECEASED
ADDRESS		
Marital Status of Parents	<input type="checkbox"/> DIVORCED	<input type="checkbox"/> OTHER SEPARATION
	<input type="checkbox"/> LEGAL SEPARATION	<input type="checkbox"/> RE-MARRIED
GUARDIAN	PHONE NO.	
ADDRESS		
Issuing Officer(s)	Assigned to (Unit)	
RELEASED OR PLACE OF DETENTION		
IMPORTANT: HAVE PARENTS OR GUARDIAN BEEN NOTIFIED THAT JUVENILE IS BEING DETAINED?		YES      NO
<b>STATEMENT OF FACTS CONCERNING THE COMPLAINT</b>		
<p>8-7-14      ADDRESS ↳ in federal prison for many years to come - 1-27-17</p> <p><i>SM</i></p> <p>87/14      2014</p> <p>I hereby certify the foregoing to be a true and correct copy of the original on file in this court.</p> <p>DAYTON MUNICIPAL COURT Mark E. Owens, Clerk of Court By <i>District Clerk</i> Deputy</p> <p>WARRANT / F.W. / P.D. ORDERED BY</p> <p>JUDGE</p> <p>*****</p> <p>ATTORNEY FOR DEFENDANT</p>		

JUVENILE COMPLAINT

APR 10 2014

Cont'd	NG	G	No Contest
<b>CAPIAS ISSUED</b>			
MAR 18 2011			
<div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;">RET/REC: <u>8-7-2014</u></div> <div style="display: inline-block; vertical-align: middle;">   <u>Kevin E. Nichols</u>  <u>WEO</u> </div>			
<p>8-7-14      ADDRESS ↳ in federal prison for many years to come - 1-27-17</p> <p><i>SM</i></p> <p>87/14      2014</p> <p>I hereby certify the foregoing to be a true and correct copy of the original on file in this court.</p> <p>DAYTON MUNICIPAL COURT Mark E. Owens, Clerk of Court By <i>District Clerk</i> Deputy</p> <p>WARRANT / F.W. / P.D. ORDERED BY</p> <p>JUDGE</p> <p>*****</p> <p>ATTORNEY FOR DEFENDANT</p>			